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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

C. DEAN RASMUSSEN,

Plaintiff and Appellant,

v.

WEST POINTE HOMES, INC. et al.,

Defendants and Respondents.

B261415

(Los Angeles County
Super. Ct. No. BC494352)

APPEAL from an order of the Superior Court of Los Angeles County, Teresa Sanchez-Gordon, Judge. Dismissed.

Enterprise Counsel Group, James S. Azadian and Matthew W. Rosene; Stern & Goldberg, Alan N. Goldberg and Aaron M. White for Plaintiff and Appellant.

Parker, Milliken, Clark, O'Hara & Samuelian, Thomas E. Shuck and Alan Weinfeld for Defendants and Appellants.

Plaintiff, C. Dean Rasmussen, appeals from an order denying the renewal of his motion to disqualify the law firm of Parker, Milliken, Clark, O’Hara & Samuelian from representing defendants: West Point Homes, Inc.; Moorpark Property 67, LLC and Western States Long Term Investments, LLC. On February 21, 2013, plaintiff moved to disqualify defense counsel. On June 12, 2013, plaintiff’s motion to disqualify defense counsel was denied. On October 22, 2014, plaintiff renewed his motion to disqualify defendants’ lawyers. On November 19, 2014, plaintiff’s renewed motion to disqualify defense counsel was denied. Plaintiff appeals from the November 19, 2014 order denying his renewed motion to disqualify defense counsel. Defendants have moved to dismiss plaintiff’s appeal. We agree that plaintiff’s appeal must be dismissed.

An order denying a renewal of a motion is not appealable. (*Tate v. Wilburn* (2010) 184 Cal.App.4th 150, 160; Code Civ. Proc., §§ 904.1, 1008, subd. (g); Eisenberg, Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2014) ¶ 2:258.1, pp. 2-146 to 2-147.) Plaintiff raises various appealability arguments. However, the right to appeal is statutory. (*Dana Point Safe Harbor Collective v. Superior Court* (2010) 51 Cal.4th 1, 5 [“right to appeal is wholly statutory,” citing Code Civ. Proc., § 904.1]; *Jennings v. Marralle* (1994) 8 Cal.4th 121, 126 [an appealable order or judgment “is a jurisdictional prerequisite to an appeal”].) The simple truth is no statute allows for an appeal from an order denying the a renewal motion. As an order denying a renewal motion is not appealable, we must dismiss plaintiff’s appeal. (*People v. Loper* (2015) 60 Cal.4th 1155, 1159 [“[A] party may not appeal a trial court’s judgment, order or ruling unless such is expressly made appealable by statute.”]; *Clemmer v. Hartford Insurance Co.* (1978) 22 Cal.3d 865, 871 [“Its appeal must be dismissed insofar as it purports to be from the latter two orders, such orders being nonappealable.”].)

Plaintiff argues we should deem his appeal to be a writ petition. To begin with, we have already denied a writ petition raising the same issues. (*Rasmussen v. Superior Court* (Feb. 13, 2015, B261384) [nonpub. order].) Plaintiff has failed to identify unusual or changed circumstances warranting reconsideration in a second writ proceeding of issues we decided in our February 13, 2015 order denying his first writ petition. (*Griffin*

v. Municipal Court (1977) 20 Cal.3d 300, 305, fn. 9; *Hagan v. Superior Court* (1962) 57 Cal.2d 767, 770-771, overruled on another point in *Kowis v. Howard* (1992) 3 Cal.4th 888, 897, 899.) More importantly, the present appeal does not meet any criteria for treating it as a writ petition. (*Morehart v. County of Santa Barbara* (1994) 7 Cal.4th 725, 744-747; *Olson v. Cory* (1983) 35 Cal.3d 390, 401.) We decline to treat this appeal as a writ matter.

Finally, in our February 13, 2015 order denying plaintiff's writ petition, we erroneously noted the disqualification order was appealable. Now, after full briefing, we conclude we were in error in our order denying plaintiff's writ petition. However, no order to show cause or alternative writ of mandate issued before we summarily denied plaintiff's writ petition. Thus, that order is not controlling. (*Powers v. City of Richmond* (1995) 10 Cal.4th 85, 114; *Fink v. Shemtov* (2010) 180 Cal.App.4th 1160, 1171-1173.)

The appeal is dismissed. Defendants, West Point Homes, Inc., Moorpark Property 67, LLC and Western States Long Term Investments, LLC, shall recover their costs incurred on appeal from plaintiff, C. Dean Rasmussen.

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TURNER, P. J.

We concur:

KRIEGLER, J.

KIRSCHNER, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.